

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

v.

BORQUEZ, *et al.*,

Defendants.

Case No. 1:23-cv-00046-ADA-BAM (PC)

ORDER GRANTING DEFENDANTS'  
MOTION TO STAY NON-EXHAUSTION-  
RELATED DISCOVERY AND VACATE  
ALL CURRENT DEADLINES

(ECF No. 37)

Plaintiff Devonte B. Harris ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Borquez and Quevedo<sup>1</sup> for deliberate fabrication of evidence in violation of the Fourteenth Amendment.

On September 19, 2023, the Court issued a Discovery and Scheduling Order setting the deadline for completion of all discovery for May 19, 2024, and the deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) for July 29, 2024. (ECF No. 31.)

On December 6, 2023, Defendants filed a motion for summary judgment on the ground that Plaintiff failed to exhaust his administrative remedies. (ECF No. 35.) Plaintiff's opposition is currently due on or before January 2, 2024. Local Rule 230(l); Fed. R. Civ. P. 6(a)(1)(C) and

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<sup>1</sup> Erroneously sued as "Queredo."

1 6(d).

2       Currently before the Court is Defendants' motion to stay non-exhaustion-related discovery  
3 and vacate all current deadlines, filed December 14, 2023. (ECF No. 37.) Defendants move to  
4 stay non-exhaustion-related discovery and to vacate the remaining deadlines in the Court's  
5 Discovery and Scheduling Order pending resolution of Defendants' motion for summary  
6 judgment on the issue of exhaustion. (*Id.*) Plaintiff has not yet filed a response, but the Court  
7 finds a response unnecessary and the motion is deemed submitted. Local Rule 230(l).

8       Pursuant to Rule 16(b), a scheduling order "may be modified only for good cause and  
9 with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause" standard "primarily  
10 considers the diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations,*  
11 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order "if it cannot  
12 reasonably be met despite the diligence of the party seeking the extension." *Id.* If the party was  
13 not diligent, the inquiry should end. *Id.*

14       Defendants state that the motion should be granted because the pending motion for  
15 summary judgment may dispose of the entire case, the Court does not require additional  
16 information to rule on the pending motion for summary judgment, and if the pending motion for  
17 summary judgment is granted, any prior-conducted discovery would have been a waste of the  
18 parties' time and resources. (ECF No. 34.)

19       Having considered Defendants' moving papers, the Court finds good cause to modify the  
20 Discovery and Scheduling Order to stay merits-based discovery and to vacate the discovery and  
21 dispositive motion deadlines. The Court finds it would be an efficient use of the resources of the  
22 Court and the parties to address any exhaustion issues prior to reaching the merits of this action.  
23 The Court further notes that a stay of merits-based discovery does not prevent the parties from  
24 conducting any further discovery needed to address the issue of whether Plaintiff exhausted his  
25 administrative remedies, particularly in light of the pending deadline for the filing of Plaintiff's  
26 opposition. Finally, the Court finds that the relief granted here will not result in prejudice to  
27 Plaintiff.

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Accordingly, IT IS HEREBY ORDERED as follows:

1. Defendants' motion to stay non-exhaustion-related discovery and vacate all current deadlines, (ECF No. 37), is GRANTED;
  2. Merits-based discovery (not including discovery related to the issue of exhaustion) is STAYED;
  3. The discovery and dispositive motion deadlines are VACATED; and
  4. As necessary and appropriate, the Court will reset the deadlines following resolution of the pending motion for summary judgment for failure to exhaustion administrative remedies.

IT IS SO ORDERED.

Dated: **December 15, 2023**

/s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE